



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 237**

**RIN 0750-AI05**

**Defense Federal Acquisition Regulation Supplement: Private  
Sector Notification Requirements of In-Sourcing Actions DFARS  
Case 2012-D036**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act regarding private sector notification of in-sourcing actions.

**DATES:** Effective date: [Insert date of publication in the FEDERAL REGISTER].

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER], to be considered in the formation of a final rule."

**ADDRESSES:** Submit comments identified by DFARS Case 2012-D036 using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit

comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D036" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D036." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D036 on your attached document.

- o E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2012-D036 in the subject line of the message.
- o Fax: 571-372-6094.
- o Mail: Defense Acquisition Regulations System, Attn: Annette Gray, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Annette Gray, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6093; facsimile 571-372-6101.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

This interim rule revises DFARS 237.102-79 to implement section 938 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 regarding private sector notification of in-sourcing actions.

## **II. Discussion and Analysis.**

Section 938 of the NDAA requires the Secretary of Defense to establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert (in-source) to performance by DoD civilian employees. A written notification will be provided to affected incumbent contractors within 20 business days of the contracting officer's receipt of a decision by the cognizant component in-sourcing program official to in-source services. The notification will summarize why the services are being insourced and must be coordinated with the component's in-sourcing program official. A copy of the notification will be provided to the congressional defense committees.

## **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it impacts only those incumbent contractors for which an in-sourcing determination has been made. The DFARS change relates solely to a notification requirement of a decision, made outside of acquisition regulatory channels, to convert a contracted function to performance by DoD civilian employees. The impact of this interim rule will be to heighten the awareness of impacted firms. An initial regulatory flexibility analysis has been performed and is summarized as follows:

This action implements section 938 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 regarding private sector notification of in-sourcing actions. Section 938 of the

NDAA requires the Secretary of Defense to establish procedures for the timely notification of any contractor that performs a function that the Secretary plans to convert (in-source) to performance by DoD civilian employees and to also provide the congressional defense committees a copy of any such notification.

The interim rule will apply to all small business concerns that have contracts with DoD agencies that are being in-sourced. The most recent data from the DoD Office of Small Business Programs for fiscal years 2009 thru 2012 shows an average of 59,362 small business concerns have contracts with DoD. The degree of potential impact of this rule to those concerns, however, is unknown since there is no way to gauge in advance the extent of any future in-sourcing decisions.

There are no projected reporting, recordkeeping, and other compliance requirements associated with this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD has not identified any alternatives that would fulfill the requirements of the statute and reduce impact on small businesses. Any impact of the rule is expected to be beneficial to small businesses, by giving them timely notification of planned in-sourcing actions.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small

entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2012-D036), in correspondence.

#### **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **VI. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense, pursuant to 41 U.S.C. 1707(d), that urgent and compelling reasons exist to promulgate this rule on an interim basis without prior opportunity for public comment. This action is necessary to implement section 938 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012, which requires DoD to provide notification to the private sector of in-sourcing action determinations. Section 938 requires the Secretary of Defense to establish procedures for the timely notification of any incumbent contractor who performs a function that the Secretary plans to convert (in-source) to performance by DoD civilian employees. The notification must also be provided to the congressional defense committees. In-sourcing

decisions may have a significant economic effect on firms that have contracts with DoD. Firms that are not notified on a timely basis of an in-sourcing determination that impacts them have less time to prepare for lost revenue and to make staffing adjustments. The rule, in addition to ensuring that there will be timely notification to affected contractors, should help facilitate a more seamless transition in services when implementing in-sourcing requirements. Nonetheless, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

#### **List of Subjects in 48 CFR Part 237**

Government procurement.

**Manuel Quinones,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 237 are amended as follows

#### **PART 237-SERVICE CONTRACTING**

1. The authority citation for 48 CFR part 237 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 237.102-79 is revised to read as follows:

**237.102-79 Private sector notification requirements in support of in-sourcing actions.**

In accordance with 10 U.S.C. 2463, contracting officers shall provide written notification to affected incumbent contractors of Government in-sourcing determinations. Notification shall be provided within 20 business days of the contracting officer's receipt of a decision from the cognizant component in-sourcing program official. The notification will summarize the requiring official's final determination as to why the service is being in-sourced and shall be coordinated with the component's in-sourcing program official. No formal hiring or contract-related actions may be initiated prior to such notification, except for preliminary internal actions associated with hiring or contract modification. The memorandum on private sector notification requirements in support of in-sourcing actions is available at PGI 237.1, under the Supplemental Information tab.

[FR Doc. 2013-25727 Filed 10/30/2013 at 8:45 am; Publication Date: 10/31/2013]